

**SENATE, No. 273**

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**STATE OF NEW JERSEY**

**212th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

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**Senators Sweeney, Allen, Assemblymen Connors, Albano,  
Assemblywoman Voss and Assemblyman Manzo**

**SYNOPSIS**

Criminalizes organized retail theft and establishes crime of leader of organized retail theft enterprise.

**CURRENT VERSION OF TEXT**

As reported by the Senate Law and Public Safety and Veterans' Affairs Committee with technical review.

(Sponsorship Updated As Of: 6/23/2006)

1 AN ACT concerning organized retail theft, amending N.J.S.2C:20-  
2 11 and supplementing chapter 20 of Title 2C of the New Jersey  
3 Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. N.J.S.2C:20-11 is amended to read as follows:

9 a. Definitions. The following definitions apply to this section:

10 (1) "Shopping cart" means those push carts of the type or types  
11 which are commonly provided by grocery stores, drug stores or  
12 other retail mercantile establishments for the use of the public in  
13 transporting commodities in stores and markets and, incidentally,  
14 from the stores to a place outside the store;

15 (2) "Store or other retail mercantile establishment" means a  
16 place where merchandise is displayed, held, stored or sold or  
17 offered to the public for sale;

18 (3) "Merchandise" means any goods, chattels, foodstuffs or  
19 wares of any type and description, regardless of the value thereof;

20 (4) "Merchant" means any owner or operator of any store or  
21 other retail mercantile establishment, or any agent, servant,  
22 employee, lessee, consignee, officer, director, franchisee or  
23 independent contractor of such owner or proprietor;

24 (5) "Person" means any individual or individuals, including an  
25 agent, servant or employee of a merchant where the facts of the  
26 situation so require;

27 (6) "Conceal" means to conceal merchandise so that, although  
28 there may be some notice of its presence, it is not visible through  
29 ordinary observation;

30 (7) "Full retail value" means the merchant's stated or advertised  
31 price of the merchandise;

32 (8) "Premises of a store or retail mercantile establishment"  
33 means and includes but is not limited to, the retail mercantile  
34 establishment; any common use areas in shopping centers and all  
35 parking areas set aside by a merchant or on behalf of a merchant for  
36 the parking of vehicles for the convenience of the patrons of such  
37 retail mercantile establishment;

38 (9) "Under-ring" means to cause the cash register or other sale  
39 recording device to reflect less than the full retail value of the  
40 merchandise;

41 (10) "Antishoplifting or inventory control device countermeasure"  
42 means any item or device which is designed, manufactured,  
43 modified, or altered to defeat any antishoplifting or inventory  
44 control device;

45 (11) "Organized retail theft enterprise" means any association of

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 two or more persons who engage in the conduct of or are associated  
2 for the purpose of effectuating the transfer or sale of shoplifted  
3 merchandise.

4 b. Shoplifting. Shoplifting shall consist of any one or more of  
5 the following acts:

6 (1) For any person purposely to take possession of, carry away,  
7 transfer or cause to be carried away or transferred, any merchandise  
8 displayed, held, stored or offered for sale by any store or other retail  
9 mercantile establishment with the intention of depriving the  
10 merchant of the possession, use or benefit of such merchandise or  
11 converting the same to the use of such person without paying to the  
12 merchant the full retail value thereof.

13 (2) For any person purposely to conceal upon his person or  
14 otherwise any merchandise offered for sale by any store or other  
15 retail mercantile establishment with the intention of depriving the  
16 merchant of the processes, use or benefit of such merchandise or  
17 converting the same to the use of such person without paying to the  
18 merchant the value thereof.

19 (3) For any person purposely to alter, transfer or remove any  
20 label, price tag or marking indicia of value or any other markings  
21 which aid in determining value affixed to any merchandise  
22 displayed, held, stored or offered for sale by any store or other retail  
23 mercantile establishment and to attempt to purchase such  
24 merchandise personally or in consort with another at less than the  
25 full retail value with the intention of depriving the merchant of all  
26 or some part of the value thereof.

27 (4) For any person purposely to transfer any merchandise  
28 displayed, held, stored or offered for sale by any store or other retail  
29 merchandise establishment from the container in or on which the  
30 same shall be displayed to any other container with intent to deprive  
31 the merchant of all or some part of the retail value thereof.

32 (5) For any person purposely to under-ring with the intention of  
33 depriving the merchant of the full retail value thereof.

34 (6) For any person purposely to remove a shopping cart from the  
35 premises of a store or other retail mercantile establishment without  
36 the consent of the merchant given at the time of such removal with  
37 the intention of permanently depriving the merchant of the  
38 possession, use or benefit of such cart.

39 c. Gradation. (1) Shoplifting constitutes a crime of the second  
40 degree under subsection b. of this section if the full retail value of  
41 the merchandise is ~~【\$75,000.00】~~ \$75,000 or more, or the offense is  
42 committed in furtherance of or in conjunction with an organized  
43 retail theft enterprise and the full retail value of the merchandise is  
44 \$1,000 or more.

45 (2) Shoplifting constitutes a crime of the third degree under  
46 subsection b. of this section if the full retail value of the  
47 merchandise exceeds ~~【\$500.00】~~ \$500 but is less than ~~【\$75,000.00】~~

1 \$75,000, or the offense is committed in furtherance of or in  
2 conjunction with an organized retail theft enterprise and the full  
3 retail value of the merchandise is less than \$1,000.

4 (3) Shoplifting constitutes a crime of the fourth degree under  
5 subsection b. of this section if the full retail value of the  
6 merchandise is at least \$200.00 but does not exceed \$500.00.

7 (4) Shoplifting is a disorderly persons offense under subsection  
8 b. of this section if the full retail value of the merchandise is less  
9 than \$200.00.

10 The value of the merchandise involved in a violation of this  
11 section may be aggregated in determining the grade of the offense  
12 where the acts or conduct constituting a violation were committed  
13 pursuant to one scheme or course of conduct, whether from the  
14 same person or several persons, or were committed in furtherance  
15 of or in conjunction with an organized retail theft enterprise.

16 Additionally, notwithstanding the term of imprisonment provided  
17 in N.J.S.2C:43-6 or 2C:43-8, any person convicted of a shoplifting  
18 offense shall be sentenced to perform community service as  
19 follows: for a first offense, at least ten days of community service;  
20 for a second offense, at least 15 days of community service; and for  
21 a third or subsequent offense, a maximum of 25 days of community  
22 service and any person convicted of a third or subsequent  
23 shoplifting offense shall serve a minimum term of imprisonment of  
24 not less than 90 days.

25 d. Presumptions. Any person purposely concealing unpurchased  
26 merchandise of any store or other retail mercantile establishment,  
27 either on the premises or outside the premises of such store or other  
28 retail mercantile establishment, shall be prima facie presumed to  
29 have so concealed such merchandise with the intention of depriving  
30 the merchant of the possession, use or benefit of such merchandise  
31 without paying the full retail value thereof, and the finding of such  
32 merchandise concealed upon the person or among the belongings of  
33 such person shall be prima facie evidence of purposeful  
34 concealment; and if such person conceals, or causes to be  
35 concealed, such merchandise upon the person or among the  
36 belongings of another, the finding of the same shall also be prima  
37 facie evidence of willful concealment on the part of the person so  
38 concealing such merchandise.

39 e. A law enforcement officer, or a special officer, or a merchant,  
40 who has probable cause for believing that a person has willfully  
41 concealed unpurchased merchandise and that he can recover the  
42 merchandise by taking the person into custody, may, for the purpose  
43 of attempting to effect recovery thereof, take the person into  
44 custody and detain him in a reasonable manner for not more than a  
45 reasonable time, and the taking into custody by a law enforcement  
46 officer or special officer or merchant shall not render such person  
47 criminally or civilly liable in any manner or to any extent  
48 whatsoever.

1 Any law enforcement officer may arrest without warrant any  
2 person he has probable cause for believing has committed the  
3 offense of shoplifting as defined in this section.

4 A merchant who causes the arrest of a person for shoplifting, as  
5 provided for in this section, shall not be criminally or civilly liable  
6 in any manner or to any extent whatsoever where the merchant has  
7 probable cause for believing that the person arrested committed the  
8 offense of shoplifting.

9 f. Any person who possesses or uses any antishoplifting or  
10 inventory control device countermeasure within any store or other  
11 retail mercantile establishment is guilty of a disorderly persons  
12 offense.

13 (cf: P.L.2000, c.16, s.1)

14  
15 2. (New section) A person is a leader of an organized retail theft  
16 enterprise if he conspires with others as an organizer, supervisor,  
17 financier or manager, to engage for profit in a scheme or course of  
18 conduct to effectuate the transfer or sale of shoplifted merchandise.  
19 Leader of organized retail theft enterprise is a crime of the second  
20 degree. Notwithstanding the provisions of subsection a. of  
21 N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000  
22 or five times the retail value of the merchandise seized at the time  
23 of the arrest, whichever is greater.

24 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of  
25 leader of organized retail theft enterprise shall not merge with the  
26 conviction for any offense which is the object of the conspiracy.  
27 Nothing contained in this section shall prohibit the court from  
28 imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this  
29 section be construed in any way to preclude or limit the prosecution  
30 or conviction of any person for conspiracy under N.J.S.2C:5-2, or  
31 any prosecution or conviction for any other offense.

32 It shall not be necessary in any prosecution under this section for  
33 the State to prove that any intended profit was actually realized. The  
34 trier of fact may infer that a particular scheme or course of conduct  
35 was undertaken for profit from all of the attending circumstances,  
36 including but not limited to the number of persons involved in the  
37 scheme or course of conduct, the actor's net worth and his  
38 expenditures in relation to his legitimate sources of income, the  
39 amount of merchandise involved, or the amount of cash or currency  
40 involved.

41 It shall not be a defense to a prosecution under this section that  
42 any shoplifted merchandise was brought into or transported in this  
43 State solely for ultimate distribution in another jurisdiction; nor  
44 shall it be a defense that any profit was intended to be made in  
45 another jurisdiction.

46  
47 3. This act shall take effect immediately.